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## Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	DEPT. OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30-20
<b>Regulation title</b>	State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions; Administration of Medical Assistance Services.
<b>Action title</b>	Increased Cost-Sharing Measures
<b>Document preparation date</b>	NEED GOV APPROVAL BY

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://www.townhall.state.va.us/dpbpages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)), and the *Virginia Register Form, Style, and Procedure Manual* ([http://legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Preamble

*The APA (Section 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.*

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

The Administrative Process Act (Section 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. This suggested emergency regulation meets the standard at COV 2.2-4011(i) as it was mandated by the 2004 Appropriations Act, Chapter 4, Item 326 EEE.

The Governor is hereby requested to approve this agency's adoption of the emergency regulations entitled Amount, Duration, and Scope of Services: State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions; Administration of Medical Assistance Services (12 VAC 30-20-150 and 30-20-160) and also authorize the initiation of the promulgation process provided for in § 2.2-4007.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

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The purpose of this regulation is to amend the existing State Plan in compliance with the General Assembly mandate in the 2004 Appropriations Act, Chapter 4, Item 326 EEE to increase cost-sharing measures.

### Legal basis

*Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1916 of the *Social Security Act* [42 U.S.C. 1396o] provides governing authority for payments for services.

### Substance

*Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

In 2004, the General Assembly included language in the Appropriations Act (Item 326 EEE) directing the Department of Medical Assistance Services (DMAS) to amend the State Plan for Medical Assistance to implement and/or increase cost sharing requirements for eligible recipients as necessary in order to meet specified savings targets, also included in the Act. Further, the Act gave DMAS authority to enact emergency regulations to effect this provision.

As directed by the Act, on October 1, 2004, DMAS reported on a plan to increase cost sharing requirements that would meet the savings targets. The plan proposed to increase the amount of patient co-payments on certain services where cost sharing already exists and to initiate co-payments on certain services that do not currently have cost sharing requirements. The proposed

Medicaid co-payment amounts are permissible under Federal regulations, which stipulate that the State may require nominal co-payments (*i.e.*, \$0.50 - \$3.00) based on the typical State payment for the service.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12 VAC 30-20-150		Co-payment for Clinic Visit = \$1.00	Co-payment for Clinic Visit = \$2.00 State's average payment of \$26 is used as basis, as permitted under Federal regulation.
12 VAC 30-20-150		Co-payment for Eye Examination = \$1.00	Co-payment for Eye Examination = \$2.00 State's average payment of \$45 is used as basis, as permitted under Federal regulation.
12 VAC 30-20-160		Co-payment for Clinic Visit = \$1.00	Co-payment for Clinic Visit = \$2.00 State's average payment of \$26 is used as basis, as permitted under Federal regulation.
12 VAC 30-20-160		Co-payment for Eye Examination = \$1.00	Co-payment for Eye Examination = \$2.00 State's average payment of \$45 is used as basis, as permitted under Federal regulation.

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.*

The agency faced the decision to implement the co-pay responsibilities all at once or over time. DMAS decided to phase in the co-pays over time to reduce the impact of the new charges on both recipients and providers.

**Family impact**

*Please assess the impact of the emergency regulatory action on the institution of the family and family stability.*

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. It does not strengthen or erode the marital commitment, but will decrease disposable family income because co-payments are being increased.